

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division

DOUGLAS SHEPHERD,
ALAN G. and DELORES N. BARTEL, L.P.
and
1400 HAMPTON BLVD., L.L.C.,

Plaintiffs,
vs. CIVIL ACTION NO. 2:10cv343

NATIONWIDE MUTUAL
INSURANCE COMPANY
and
1400 HAMPTON BOULEVARD
CONDOMINIUM ASSOCIATION, INC.,

Defendants.

MOTION TO REMAND

Come now Plaintiffs, Douglas Shepherd, Alan G. and Delores N. Bartel, L.P., and 1400 Hampton Blvd., L.L.C., pursuant to 28 U.S.C. § 1447 (c), and move the Court to remand this case back to state court on the following grounds:

1. This is a declaratory judgment action filed under Virginia Code Section 8.01-184 to determine whether an insurance policy issued by Nationwide Mutual Insurance Company provides liability coverage and a duty to defend in favor of the Plaintiffs with regard to an action currently pending in the Circuit Court of the City of Norfolk, Virginia.

2. This declaratory judgment action was filed on June 18, 2010, in the Circuit Court of the City of Norfolk, Virginia.

3. This action only involves issues arising under state law.

4. On July 15, 2010, Defendant Nationwide filed a Notice of Removal under 28 U.S.C. § 1446.

5. Defendant Nationwide claims that this Honorable Court has jurisdiction over this matter based on diversity.

6. Complete diversity of citizenship is not present, in that the Plaintiffs and a Defendant are residents of the same state. In order to create complete diversity, Nationwide has filed a Motion to Realign the parties.

7. The federal Declaratory Judgment Act, at 28 U.S.C. § 2201 (a), provides that jurisdiction over declaratory judgment actions is discretionary, in that a federal court "may" declare the rights of any interested party seeking a declaration.

8. District courts are under no compulsion to exercise jurisdiction over declaratory judgment actions, and the pendency of a related or parallel state court action weighs in favor of the district court declining to exercise jurisdiction.

9. The issues in this action do not involve federal law and are governed solely by state law.

10. The state court has a strong interest in deciding this case, whereas this Court's interest is at its lowest.

11. This Court should abstain from exercising jurisdiction and remand this case to state court.

12. The Plaintiffs incorporate by reference and adopt the grounds and arguments made by Defendant 1400 Hampton Boulevard Condominium Association, Inc. in its Motion to Remand to State Court [Dkt. 14] and brief in support [Dkt. 15].

WHEREFORE, for the reasons expressed in this motion and in the accompanying memorandum in support, the Plaintiffs move the court to abstain from exercising jurisdiction over this declaratory judgment action, to remand this case to state court, and award them their costs, expenses, and attorney's fees incurred as a result of the removal.

DOUGLAS SHEPHERD, ALAN G.
and DELORES N. BARTEL, L.P.,
and 1400 HAMPTON BLVD., L.L.C.,

By _____ /s/
Of Counsel

Randolph C. DuVall, Esquire
Virginia State Bar Number 17646
Counsel for Douglas Shepherd, Alan G.
and Delores N. Bartel, L.P., and
1400 Hampton Blvd., L.L.C.
Breeden, Salb, Beasley & DuVall, P.L.C.
555 East Main Street, Suite 1210
Norfolk, Virginia 23510-2234
Phone: 757-622-1111
Fax: 757-622-4049
duvall@breedenlaw.net

Darlene P. Bradberry, Esquire
Virginia State Bar Number 34442
Counsel for Douglas Shepherd, Alan G.
and Delores N. Bartel, L.P., and
1400 Hampton Blvd., L.L.C.
Breeden, Salb, Beasley & DuVall, P.L.C.
555 East Main Street, Suite 1210
Norfolk, Virginia 23510-2234
Phone: 757-622-6111
Fax: 757-622-4049
dbradberry@breedenlaw.net

CERTIFICATE OF SERVICE

I certify that on the 11th day of August, 2010, I will electronically file the foregoing with the Clerk of this Court using the CM/ECF system, which will then send a notification of such filing (NEF) to the following:

Wayne F. Cyron, Esquire
James G. Smalley, Esquire
Cyron & Miller, L.L.P.
100 North Pitt Street, Suite 200
Alexandria, Virginia 22314-3134
wcyron@cyronmiller.com
jsmalley@cyronmiller.com

Counsel for Nationwide Mutual Insurance Company
and

John S. Norris, Jr., Esquire
Robert M. Lorey, Esquire
Norris, St. Clair & Lotkin
2840 S. Lynnhaven Road
Virginia Beach, Virginia 23452
jnorris@norrisstclair.com
rloreys@norrisstclair.com

Counsel for 1400 Hampton Boulevard Condominium Association, Inc.

/s/

Darlene P. Bradberry, Esquire
Virginia State Bar Number 34442
Counsel for Douglas Shepherd, Alan G.
and Delores N. Bartel, L.P., and
1400 Hampton Blvd., L.L.C.
Breedon, Salb, Beasley & DuVall, P.L.C.
555 East Main Street, Suite 1210
Norfolk, Virginia 23510
Phone: (757) 622-1111
Facsimile: (757) 622-4049
dbradberry@breedenlaw.net